

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
LINE OF SITE, INC.)	File Nos. BPMDC-9200221
)	BPMDC-9200414
For Authorization to Operate Commercial)	
Instructional Television Fixed Service Stations)	
on the A-and C-Group Channels at Globe, Arizona)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2003

Released: April 23, 2003

By the Commission:

1. In this *Memorandum Opinion and Order*, we deny the Application for Review¹ filed by Line of Site, Inc. (Line of Site) on July 17, 2000. Line of Site seeks reinstatement *nunc pro tunc* and grant of its applications for authorization to operate commercial Instructional Television Fixed Service (ITFS) stations on the A-and C-group channels at Globe, Arizona.

2. *Background.* In 1991, the Commission permitted wireless cable entities to use available ITFS channels for commercial operations.² The Commission provided that only wireless cable entities offering a reasonable expectation of prompt wireless cable service would be able to apply for licenses for ITFS frequencies. In sum, the Commission required that a wireless cable applicant must hold a conditional license, a license, or a lease, or must have filed an unopposed application for at least four Multipoint Distribution Service (MDS) channels to use in conjunction with the facilities proposed on the ITFS frequencies.³ The applicant must also show that there are no unused MDS channels available for application, purchase, or lease that could be used in lieu of the ITFS frequencies for which the applicant applied.⁴ A wireless cable entity may apply for ITFS frequencies at the same time it applies for the related MDS frequencies, but if that MDS application is opposed by a timely filed mutually exclusive application or petition to deny, the application for ITFS facilities will be returned.⁵ A wireless cable entity may be licensed on ITFS channels in areas where at least eight other ITFS channels remain

¹ Line of Site, Inc., Application for Review (filed July 17, 2000) (Line of Site AFR).

² See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, *Second Report and Order*, 6 FCC Rcd 6792, 6801-06 (1991) (*Second Report and Order*); see also 47 C.F.R. § 74.990.

³ See 47 C.F.R. § 74.990(c) (1992).

⁴ See 47 C.F.R. § 74.990(d) (1992).

⁵ *Id.* That entity can reapply for its ITFS facilities, if still available, upon grant of its MDS application; see *Second Report and Order*, 6 FCC Rcd at 6804 (1991).

available in the community for future ITFS use.⁶ Finally, a wireless cable entity is subject to the MDS interference protection requirements in Section 21.902 of the Commission's Rules.⁷ Consequently, a wireless cable entity must file an interference study with its application.⁸ These rules became effective on January 2, 1992.⁹

3. On January 2, 1992, Line of Site filed two applications to operate ITFS stations on the A Group and C Group Channels in Globe, Arizona.¹⁰ On April 21, 1999, the Video Services Division of the former Mass Media Bureau (Bureau) dismissed the applications for failure to comply with Sections 74.990(a), (d) and (f) of the Commission's Rules. First, the Video Services Division found that Line of Site failed to show that at least eight other ITFS channels would remain available in the community for future ITFS use. Additionally, the Division determined that Line of Site did not show that there were no MDS or multichannel MDS (MMDS) channels available for application, purchase or lease that could be used in lieu of the applied for ITFS channels. Finally, it found that Line of Site's proposed facilities would cause harmful interference to previously authorized stations.¹¹

4. On May 21, 1999, Line of Site requested reconsideration of the dismissal of its applications.¹² On June 15, 2000, the Video Services Division denied Line of Site's reconsideration petition and affirmed the dismissal of the applications.¹³ On July 17, 2000, Line of Site requested review of the denial of its reconsideration petition.¹⁴ Line of Site asserts that it did not violate the interference protection requirements. Line of Site asserts that its applications were consistent with Part 74 even though they did not include a frequency analysis with respect to Stations WLX470, WNC351 and WHR919.¹⁵ Specifically, Line of Site states that the licensee of these stations, People's Choice TV, had agreed to resolve any actual frequency interference.¹⁶

5. With regard to ITFS frequency availability, Line of Site argues that its applications were grantable, consistent with the Commission's requirements regarding frequency availability when it first filed its applications in 1992.¹⁷ Line of Site argues that it, in essence, is being penalized by the Commission staff's delay in processing Line of Site's applications because the subject applications complied with Section 74.990(a) when filed.¹⁸ Line of Site asserts that the effect of the delay created post

⁶ See 47 C.F.R. § 74.990(a) (1992).

⁷ See *Second Report and Order*, 6 FCC Rcd at 6803-04.

⁸ See 47 C.F.R. § 21.902(c) (1992).

⁹ See 56 Fed. Reg. 57808 (1991).

¹⁰ File Nos. BPMDC-9200221 and BPMDC-9200414.

¹¹ Letters from Sharon M. Bertelsen, Supervisory Attorney, Video Services Division, Mass Media Bureau to J. Stephen Rizley, Line of Site, Inc. (April 21, 1999). With respect to the A Group application, the Bureau found that Line of Site's application would cause harmful interference to Stations WND273 and WHF226. With respect to the C Group application, the Bureau found that Line of Site's application would cause harmful interference to Stations WLX470, WNC351 and WHR919.

¹² Line of Site, Inc., Petition for Reconsideration (May 21, 1999).

¹³ Letter from Charles E. Dziedzic, Assistant Chief, Video Services Division, Mass Media Bureau to J. Stephen Rizley, Line of Site, Inc. (June 15, 2000).

¹⁴ Line of Site AFR.

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

hoc conditions that made the prospect of granting Line of Site's applications inconsistent with the Commission's Rules.¹⁹

6. Finally, Line of Site maintains that its applications did satisfy Section 74.990(d) in that there were no 6-MHz MDS or MMDS channels available at the time it applied for the subject ITFS channels.²⁰ Thus, Line of Site asserts it could not use Channel 2A, an available 4 MHz channel, in lieu of the 6 MHz channel that it applied for in its application.²¹

7. *Discussion.* We have reviewed the Application for Review and find that the Bureau staff properly decided the matters raised. In particular, we agree with the Bureau's analysis and conclusion that Line of Site failed to meet the requirements of Section 74.990(f) of the Commission's Rules which state that wireless cable applicants and licensees of ITFS facilities must comply with the interference protection requirements of Section 21.902 of the Commission's Rules.²² Further, Section 74.903(a) of the Commission's Rules requires that an applicant prevent co-channel and adjacent channel interference with other previously proposed ITFS applicants or existing licensees.²³ Line of Site acknowledges in its Application for Review that it "did not include frequency analyses" of stations with which its proposed operations would interfere.²⁴ Thus, we agree with the Bureau's conclusion that Line of Site's applications to operate ITFS stations did not meet the interference protection requirements of the Commission's Rules.²⁵ Accordingly, we affirm the dismissal of the applications.

8. We believe, however, that one issue warrants further comment. Line of Site argues that the Bureau's decision must be overturned as it was not required to submit interference studies "because LOSI [Line of Site, Inc.] and People's Choice TV, Inc., the licensee of these [interfered with] stations, had agreed to resolve any actual frequency interference, as is encouraged by the Commission's Rules."²⁶ We do not agree. On the contrary, the Bureau followed well-established Commission precedent when it returned Line of Site's applications for not including the required interference studies. In this particular instance, although Section 21.902(a) states that applicants are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission,²⁷ Section 21.902(c) also states that applicants must submit interference studies with their applications.²⁸ Line of Site's assertions that it has committed to make every effort to avoid harmful interference to others and to cooperate in good faith should any interference occur in the future does not excuse its failure to submit detailed interference studies as required by Section 21.902.²⁹

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ *Id.*

²² 47 C.F.R. § 74.990; *see also* 47 C.F.R. § 21.902.

²³ 47 C.F.R. § 74.903.

²⁴ Line of Site AFR at 3-4.

²⁵ *See* June 15, 2000, Letter, at ¶ 2.

²⁶ Line of Site AFR at 4.

²⁷ 47 C.F.R. § 21.902(a).

²⁸ *See* 47 C.F.R. § 21.902(c).

²⁹ *See 4330 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites*, 10 FCC Rcd 1335, 1470 (1994), *aff'd per curiam sub. nom A/B Financial, Inc. v. FCC*, 76 F.3d 1244 (D.C. Cir. 1995) (*4330 MDS Applications MO&O*); *See e.g., G.C. Cooper*, 8 FCC Rcd 7007, 7008 (Dom. Fac. Div. 1993) (An applicant's general statement that he would use 'all legitimate engineering techniques' does not constitute the kind of showing discussed in the *MMDS Allocation Order* and required under 47 C.F.R. § 21.901(d)(7).").

9. The Section 21.902(c) requirement of an applicant to submit interference analyses at the time it files its application is separate from the Section 21.902(a) requirement of an applicant to make exceptional efforts to avoid harmful interference and to cooperate fully to resolve problems of potential interference.³⁰ Nor would an applicant's offer to file curative amendments at some later time excuse it from submitting all required interference studies at the time the applications are initially filed.³¹ Based upon these considerations, we conclude that Line of Site failed to comply with the technical requirements set forth in Section 21.902 regarding interference protection and failed to demonstrate that it is technically qualified to be an MDS licensee as required by Section 21.900. Thus, we conclude that these applications were properly returned as unacceptable for filing.³² Based on the record, the Bureau determined that Line of Site's applications would cause harmful interference to previously authorized stations.³³ Line of Site has admitted in the record of this proceeding that it did not provide any interference studies.³⁴ In light of this evidence, we agree with the Bureau that Line of Site was not in full compliance with Section 21.902, and thus, its applications were properly returned pursuant to the Commission's Rules.

10. Because we find dispositive Line of Site's failure to submit the required interference showings with its applications and to give notice, by service of these studies, to the affected parties, it is unnecessary to address petitioner's other arguments. As discussed in detail above, interference analyses are necessary at the time of application filing due to the extensive planning and engineering involved in the MDS licensing process.

11. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Application for Review filed by Line of Site, Inc. on July 17, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰ See *4330 MDS Applications MO&O*, 10 FCC Rcd at 1342; Hinton Telephone Company, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11625 (1995), *aff'd per curiam sub. nom Knollwood, Ltd. v. FCC*, 84 F.3d 1452 (D.C. Cir. 1996); *see also* 47 C.F.R. § 21.31.

³¹ See *RuralVision Central, Inc., Order on Reconsideration*, 12 FCC Rcd 21739, 21746 ¶ 18 (MMB VSD 1997); Marylan J. Benson, *Order on Reconsideration*, 7 FCC Rcd 4668, 4669, n.9. (Dom. Fac. Div. 1992); Earl V. Levels, *Memorandum Opinion and Order*, 8 FCC Rcd 5506, 5507 ¶ 8 (Dom. Fac. Div. 1993).

³² *New Channels Communications, Inc.*, 57 Rad. Reg. 2d 1600, 1602 (P&F 1985) ("In our view, an MDS application which does not contain the important and essential technical showing required by § 21.902(c) cannot be characterized as complete, or in substantial compliance with the Commission's rules and regulations, as required by the criteria for acceptability outlined in rule § 21.20(a).").

³³ See n.11 *supra*.

³⁴ Line of Site AFR at 3-4.